

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

DANIEL BRYAN KELLY,

Plaintiff,

v.

RICKY OWENS, et. al.,

Defendants.

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CIVIL ACTION NO. 2:05-cv-1150-T

**DEFENDANT COOSA COUNTY COMMISSION'S MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT**

COMES NOW Defendant Coosa County Commission and moves this Court to dismiss the Plaintiff's Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, as Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted. In support thereof, Defendant states as follows:

1. The Plaintiff's Amended Complaint contains five federal claims against Coosa County:
 - a. deliberate indifference to a serious medical need by failing to provide medical care;
 - b. deliberate indifference to a serious medical need by delaying medical treatment;
 - c. failure to train jail staff to provide medication;
 - d. failure to train jail staff to recognize serious medical conditions; and
 - e. provision of inadequate jail conditions.

2. The Plaintiff alleges six state law claims against the Coosa County Commission:
 - a. failure to fund inmate medical care as purportedly required by Alabama Code § 14-6-19;
 - b. failure to adequately fund medical staff at the jail;
 - c. negligent hiring of Dr. Weaver;
 - d. negligent retention of Dr. Weaver;
 - e. failure to maintain the facility of the Coosa County Jail; and
 - f. a vicarious liability medical malpractice claim.
3. The Plaintiff's federal claims are due to be dismissed for the following reasons:
 - a. they are barred by the statute of limitations;
 - b. as a pretrial detainee the Plaintiff cannot state Eighth Amendment claims;
 - c. as a matter of law, Defendant Coosa County Commission, having no authority over the Coosa County Sheriff, the sheriff's employees or the operation of the jail, cannot be held liable for policies or conduct of the sheriff, his employees or jail operations;
 - d. the Commission has no duty under Alabama law to provide inmate medical care or prospectively fund such care or staff training; and/or
 - e. Dr. Weaver is not a final policymaker for Coosa County.
4. The Plaintiff's state law claims are due to be dismissed because:
 - a. The Plaintiff failed to comply with the relevant statutes of non-claim;
 - b. Under Alabama law, Coosa County has no authority over, or responsibility for, the provision of medical care to inmates in the Coosa County Jail;
 - c. The Plaintiff lacks standing to make a claim based upon Alabama Code § 14-6-19, because the statute does not provide for a private right of action;

d. Even if a private right of action exists under § 14-6-19, the statute requires only that a county commission pay for treatment provided to by the sheriff – there is no prospective duty to fund;

e. The Complaint fails to state a negligent hiring/retention claim with respect to Dr. Weaver;

f. The Coosa County Commission cannot be held liable under a medical malpractice theory; and

3. The Plaintiff's compensatory damages for his state law claims cannot exceed \$100,000.00 under Alabama law.

4. The Coosa County Commission is immune from punitive damages.

WHEREFORE, PREMISES CONSIDERED, Defendant Coosa County Commission moves this Court for an order dismissing all claims against it with prejudice and for costs and attorney's fees pursuant to law and 42 U.S.C. § 1988.

Respectfully submitted this 2nd day of June, 2006.

s/Gary L. Willford, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on this the 2nd day of June, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: **Richard J. Stockham, III, Kristi Allen Dowdy, and Stephen Michael Doyle.**

s/Gary L. Willford, Jr.
OF COUNSEL